IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Revn.No.686 of 2007

Date of Decision: 26.4.2007

Ashok Kumar .....Petitioner

Versus

The State of Haryana .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Jagdish Manchanda, Advocate
for the petitioner.

JUDGMENT

The petitioner was convicted by the learned Trial Magistrate for an offence under Sections 420,467,471 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- under Sections 467/471 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for two years for the offence under Section 471 of the Indian Penal Code.

An appeal against the judgment aforementioned is pending in the Court of Additional Sessions Judge, Bhiwani.

The petitioner-accused filed a plea for suspension on conviction. That plea was declined by the learned Additional Sessions Judge, Bhiwani vide order dated 7.4.2007. The petitioner-accused has filed the present petition under Section 482 of the code of Criminal Procedure to challenge the validity of the impugned order.

In support of the plea for stay of conviction during pendency of

the appeal, the learned counsel argues that the petitioner would otherwise be dismissed from service following his conviction by the learned Trial Magistrate. It, learned counsel proceeds to argue, would adversely affect his family which is dependent upon him for financial support and sustenance. In order to buttress the plea aforementioned, the learned counsel relied upon Jai Bhagwan Versus State of Haryana, 2004(3) R.C.R. (Criminal) 512.

The prosecution allegations are fairly serious in nature. The petitioner-accused is posted as a Clerk in the Office of Civil Surgeon, Bhiwani. He was also simultaneously working in the District Blindness Control Society, Bhiwani. On 12.8.1997, he got a pay cheque for Rs.300/- under the signatures of the then Civil Surgeon, Bhiwani. However, he altered the amount indicated above to read as Rs.10,300/-. However, the correct amount of Rs.300/- continued to be recorded on the counter-foil. The petitioner-accused thereby embezzled an amount of Rs.10,000/-.

A public servant is repository of faith in relatability to the duty which he performs in relation to public. The funds handled by public servant are public funds. Any defalcation in respect thereof, if proved, deserves the sterner frown of the Court. In the present case, the proven allegations against the accused are that he effected alteration in the cheque amount and mis-appropriated a sum of Rs.10,000/-. The nature of allegations would, by itself, indicate the hollowness of the plea raised for suspension of conviction.

The reliance placed by the learned counsel for the petitioner upon Jai Bhagwan's case (supra), is mis-conceived. In that case, there was a specific plea that the accused was a poor person, that he was drawing a

meagre salary and he had a big family to support. There is no commonness of allegations in that case and the present case.

In the light thereof, the petition shall stand dismissed in limine.

(S. D. ANAND)
JUDGE

April 26, 2007
SRM